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STATUS OF UNBORN CHILD : A JURISPRUDENTIAL ANALYSIS

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I. ABSTRACT

In delving into the subject of the "Status of Unborn Child" we shall attempt to unravel the complex legal dimensions surrounding the rights and standing of unborn children in the current world, in the belief of the evolving nature of societal attitudes, medical advancements, and cultural influences that have shaped historical perspectives of the unborn. In today world, there is the presence of increasingly challenging issues in such areas as reproductive rights, medical technologies, and the rights of the unborn. In this backdrop, there is a growing need to understand the principles in jurisprudence that underlie the legal frameworks surrounding unborn children.

Looking back through history, we can see how societal changes, advances in medicine, and changes in cultural norms have had a profound effect on the way in which the law refers to and deals with the rights of unborn children today. The basis for this project comes from the recognition of gaps in existing legal systems and a compelling need for a nuanced analysis that explores the rights and interests of both the expectant mother and the unborn, hence we delve into various jurisprudential theories in our pursuit of shedding light on the philosophical, ethical, and cultural dimensions that inform legal decisions concerning unborn children. Through case law, legislative provisions, and international perspectives, the research will contribute to a current discourse on reproductive rights that seeks to provide a theoretical foundation enhancing our understanding of the status of unborn children within a broader context of jurisprudence, with the ultimate view that this research will help formulate more informed and equitable legal frameworks ensuring a balanced and just approach to the rights of the unborn.

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II. KEYWORDS:

Unborn Child, Abortion, Status, Rights

III. AIMS & OBJECTIVE OF THE RESEARCH

- The primary aim of this project is to thoroughly examine and understand how the law views and addresses the rights and status of unborn children.
- Our aim to uncover the underlying principles and theories in jurisprudence that shape these legal discussions.
- The main objective of the project to deal with a historical perspective and also to understand the current legal framework.

IV. HYPOTHESIS

The hypothesis is that laws nowadays mostly focus on protecting a woman's rights and only after the birth of a child do they start paying attention to the child's rights. But, in the future, it's possible that the legal system could change and give more importance to the unborn child's rights, even before they're born.

V. RESEARCH METHODOLOGY

The researcher has adopted a purely doctrinal method of research. The researcher has made Extensive and intensive use of the internet and published sources, magazines, and journals.

VI. LIMITATION OF THE STUDY

The researcher has limited time for the project so it may not cover every possible angle or situation related to the rights and legal status of unborn child. The complexity of the topic, combined with the diversity of legal systems and cultural perspectives, means that the project might not capture every nuance or specific circumstance. Additionally, the evolving nature of laws and societal attitudes may introduce changes that the project might not fully anticipate.

VII. INTRODUCTION

There are lot of discussions going on regarding the status of unborn child, whether it is a consider as a living person or not. Many scholars define what is a living person and according to their definition the status of an unborn child might differentiate. Before directly going to the definition of a living person we need to look at the definition of an unborn child.

"According to the medical dictionary the term *"Unborn child" typically refers to a zygote, fetus, or embryo (these are the developing stages of an unborn child) that has not yet been born but is developing within the womb of a pregnant woman. The scientific evidence shows that the unborn child is considered as a living person, since we were once a zygote, embryo, and fetus, just as we were once infants, toddlers, and adolescents."*[2] Many scholars and researchers say that the unborn is not yet human or alive in a philosophical sense, but they don't mean that the unborn isn't biologically alive. They mean that the unborn doesn't have rights like a living person.

When we talk about the term "Person", this term is derived from the Latin word called "Persona" which means a mask worn by actors playing different roles in a drama. In modern days it has been used in the sense of a living person capable of having rights and duties. Now it has been used in different senses in different disciplines.[3]

In section 2(26) of the Bharatiya Nyaya (second) Sanhita, 2023 define the word *"person" includes any company or association or body of person, whether incorporated or not.*[4] The definition of "living person" in the legal system typically refers to an individual who is alive and possesses legal rights, responsibility, and protection under the law, but it may vary across different legal systems.

According to Salmond, *"a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not.*[5]*"*

[2] The Free Dictionary, "Unborn Child," accessed April 1, 2024, [https://medical-dictionary.thefreedictionary.com/Unborn+Child].
[3] Manish Ranjan, "Meaning and Kind of Person," Legal Services India - Laws in India, Supreme court judgments, lawyers in India, accessed April 1, 2024, [https://www.legalservicesindia.com/article/2316/Meaning-and-Kind-of-Person.html].
[4] Bharatiya Nyaya (Second) Sanhita, 2023, § 2(26)
[5] John William Salmond, *Jurisprudence: Or, The Theory of the Law* (1907).

Further Person is classified into two categories:

a) Natural person

b) Legal or Juristic person

1. **Natural person –** a natural person is a human being who is biologically recognized in society and possesses legal rights and duties. They are individuals whose existence begins with birth and ends with death, with their birth being made possible by their parents or the human beings themselves. Simply a natural person is an individual having the capacity to think which allows him or her to learn, read, create something, or make decisions, also a human being has the capabilities of emotions including fear, pain, anger, sadness, happiness, etc. Earlier, slaves were considered as natural persons without having any legal rights or duties; they were treated corresponding to property, owned by other individuals who could buy, sell, or inherit them. They lacked the freedom to own property, move freely, or marry of their own will.

2. **Legal person –** a legal person is not a human being, they are created artificially by law as having rights and duties similar to a human being and the law recognizes them as a legal person such as companies, government organizations, agencies, or partnerships. This concept is relatively new, but it's crucial because it allows these entities to be treated the same as individuals in legal matters. So, when any disputes arise involving a corporation, they are treated as if they were a person in eyes of law. This recognition by the law is essential for resolving disputes effectively.

VIII. JURISPRUDENTIAL FOUNDATION

A. HISTORICAL OVERVIEW OF LEGAL PERSPECTIVE OF UNBORN CHILD

a) Ancient period

In ancient civilizations like Mesopotamia, Egypt, Greece, and Rome, people lived with their own cultures, beliefs, traditions, and ways of life. The status of unborn children

varied greatly depending on the culture and time. Some societies considered unborn children as part of the family, while others didn't see them as legal persons, Roman society was among the first to recognize an unborn child as part of a family with certain rights and protection against the world. However, ancient legal systems focused on protecting pregnant women. For example, in Mesopotamia, the Code of Hammurabi included laws that punished those who harmed pregnant women. Law 209[6] states: "If a man strikes a free-born woman so that she loses her unborn child, he shall pay ten shekels for her loss." Law 210[7] states: "If that woman dies, his daughter shall be put to death." These civilizations marked the beginning of human civilization, where people lived in communities governed by the laws of gods. They believed in multiple gods and goddesses and highly valued them. Over time, societies changed and evolved, leading to changes in the status of unborn children as well. Jewish law, as codified in the Torah and later Rabbinic literature, contains various provisions related to pregnancy and the protection of unborn children like the Exodus 21:22-25 says, "When men strive together and hit a pregnant woman, so that her children come out, but there is no harm, the one who hit her shall surely be fined, as the woman's husband shall impose on him, and he shall pay as the judges determine. But if there is harm, then you shall pay life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe."[8]

b) Medieval period

During the medieval period, religion played an important role especially Christianity in European countries, European people were very influenced by Christianity, and at that time catholic church was a prominent religious institution that made rules and

[6] The Code of Hammurabi, Law 209
[7] The Code of Hammurabi, Law 210
[8] Jay Craig, "The Law of Exodus and Abortion," Herald-Whig, accessed April 1, 2024[https://www.whig.com/lifestyles/religion/the-law-of-exodus-and-abortion/article_895b9efb-5d39-5bfc-9525-6bc26dbbff5b.html].

regulations for the people. There was a Canon law that supported the operation of the catholic church by providing a set of rules regarding the church's governance, religious teaching, resolution of disputes, protection of rights, and maintenance of moral principles.

Under canon law, there were provisions relating to abortion and injury caused to pregnant women that abortion was considered a grave sin and similar to a homicide, it reflected the belief of Christians that life began at the moment of fertilization. Injuries caused to pregnant women were also deemed to be a criminal offense under Canon law which highlighted the importance of protecting an unborn child. Ecclesiastical courts, responsible for enforcing canon law, ensured that these principles were upheld. This whole system reflected their culture and beliefs towards emphasizing the welfare and protection of pregnant women and an unborn child. This system aimed to provide them protection against harm and injury caused to them. It showed how much they cared about keeping the lifesaving of a person as well as an unborn child during medieval times.

c) In 19th century

During the 19th century, there was significant growth was shown in the legal status of an unborn child which was influenced by social development, medical advancement, and the evolution of the legal system, while the legal status of the unborn child remained a complex issue. In the 19th century, recognition of an unborn child as a separate entity had increased around the world. In this period through medical advancement, understanding of fetal development had improved which helped to recognize an unborn child as a separate entity and some of the countries started enacting laws aimed at safeguarding fetal interest. In this period emergence of law was shown that aimed at protecting the rights of unborn children, particularly in cases of harm caused to pregnant women. These laws prescribed penalties or fines for offenders, with increased recognition of their rights and protection from harm.

In England, there was legislation that dealt with a crime against pregnant women or unborn children called "the Offences Against the Person Act, 1861", which introduced penalties for causing injury to pregnant women that resulted in miscarriage. Section

58 of the Offences Against the Person Act, 1861[9], states" Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony, and being convicted thereof shall be liable . . . to be kept in penal servitude for life . . ." This legislation provides legal remedies for such offenses inflicted against pregnant women and unborn children.

In the USA, states started to enact laws to protect the unborn child from harm, and these laws prescribe the punishment for offenders who inflicted harm to unborn children and pregnant women. Several specific measures intended at controlling the distribution of contraceptives and literature linked to abortion were included in the Federal Anti-Obscenity Act, often known as the Comstock Law of 1873[10]. It did not specifically address protecting unborn infants or pregnant women, but it did forbid mailing or carrying pornographic materials, including those about abortion and contraception.

In India, during this period India was under British Rule, and British laws were imposed all over India. In British law, there were legal rights given to unborn child such as property rights and inheritance rights under property law. Further Criminal law was enacted and protection of pregnant women and unborn child from injury was there. The British colonial authority passed the Indian Penal Code (IPC) of 1860, which included abortion-related prohibitions. The IPC's Section 312[11] addressed miscarriage and made it illegal to intentionally induce a miscarriage in a pregnant woman. Overall, the legal status of an unborn child in India was influenced by the Britisher's common laws.

[9] Offences Against the Person Act, 1861, § 58.
[10] The Comstock Law of 1873.
[11] Indian Penal Code, 1860,§ 312

d) In 20th century

In this period, medical technology was more advanced, and the invention of ultrasound images had taken place which showed fetal development and viability resulting in a discussion about the personhood of an unborn child and the legal implications of terminating pregnancies.

The emergence of law has been witnessed, in some countries, the law reflects the awareness of the value of the prenatal life of an unborn child and the protection of the unborn child. However, this century also witnessed debate over abortion and reproductive rights. Supporters argue the right to abortion upon the autonomy of women and women have the right to decide about their bodies. Opponents believe that abortion is morally wrong, and it should be prohibited by law. In the Landmark case "Roe v. Wade, 1973"[12], the SC of the USA legalized abortion within certain restrictions and said that the decision to have an abortion is the autonomy of women.

With the growth of international law in the 20th century, there was development in the legal status of an unborn child at the global level was also witnessed, International Human Rights played a significant role in shaping the legal right of an unborn. There were several treaties on the rights of humans proposed such as 'the Convention on the Rights of the Child' which emphasizes the protection of the rights of child after birth and before birth. Overall, in the 20th century, the recognition of an unborn has increased and many countries enacted laws relating to the unborn, while the legal status of an unborn is still debatable after all the developments in the medical and legal system took place.

B. CONCEPTUAL FRAMEWORK IN JURISPRUDENCE

There are various philosophical and legal theories in Jurisprudence that examine the legal status of an unborn child. These theoretical frameworks have contributed by different scholars from different school of jurisprudence includes:

- **Natural Law Theory**

[12] Roe v. Wade, 410 U.S. 113 (1973).

Natural law is a philosophy based on the idea that everyone in a given society shares the same idea of what constitutes "right" and "wrong".[13] It is not created by humans or any law rather these principles based on understanding through common sense, it guides how people should live and behave in the society.

When it is applied to the topic of status of unborn child, this theory argues that human life is valuable and the law should recognize and protect the rights of human being, so that it also applied to an unborn child as this theory believe that the beginning of human life from the moment of pregnancy thus law should recognize the protection of an unborn child. Natural law theory believes in moral principles which apply to all people, so that it is a moral duty to protect an unborn child. When it comes to the right of unborn child, natural law says that rights come naturally which means everyone has right simply because they are human, and an unborn child is a developing human being. The natural law theory places an emphasis on the principle of safety and justice for unborn children, it tells us how important it is to protect their interests. It also recognizes the essential moral and ethical concerns that are involved in defining the position of a fetus or unborn in society.

❖ **Legal Positivism**

Legal positivism theory basically says that the "law as it is", and law is made by human being called as sovereign who imposed their command upon the society through sanction. It doesn't necessarily consider whether these laws are morally right or wrong same as the Natural law theory, this theory totally rejects the idea of natural theory- it is more focused on written law and its enforceability.

This theory has a different approach on the status of unborn child compared to the Natural law theory. The focus of legal positivism rely on the laws exists in a country, thus the status of unborn child determines from the legal system of

[13] R. Longley, "Natural Law: Definition and Application," ThoughtCo (November 23, 2019), accessed April 1, 2024, [https://www.thoughtco.com/natural-law-definition-4776056].

any particular country, for example countries like Chile, Ecuador, and Honduras recognize the unborn children's rights and protection under their constitution whereas countries like Canada who doesn't recognize an unborn as a person and they don't have any right and protection under their laws. Legal positivism theory has a very practical approach on the status of an unborn child, if any law recognizes their rights and protection then only, they will recognize as a separate entity or else it is a moral question.

The Ecuadorian Constitution and associated legislation recognize the rights of unborn children as well. The right to life is recognized from conception under Article 45[14] of the Ecuadorian Constitution. In a similar vein, abortion is typically illegal in Ecuador, with the exception of situations in which the pregnant woman's life or health is in danger or in when she has been raped and has a mental illness.

In Honduras, the Constitution and associated laws frequently guarantee the protection of unborn infants. The right to life from conception is expressly recognized in Article 67[15] of the Honduran Constitution. Furthermore, the majority of the time, abortion is illegal in Honduras, with a few specific exceptions such as situations in which the mother's life is in danger.

❖ **Feminist Jurisprudence**

Feminist Jurisprudence is a philosophy that examines how the law and legal system impact women's rights, experiences, and status in society. Feminist scholars criticize the biasness in law from ancient time that favors men's perspective and that set the goal of feminist jurisprudence is to achieve legal equality and justice for women. It influences many discussions on sexual and domestic violence, workplace inequality, and gender-based discrimination. All feminists share the belief that women are oppressed or disadvantaged compared to men, and that this oppression is illegitimate or unjustified in some

[14] Ecuador Const. art. 45
[15] Honduran Const. art. 67

way.[16] Overall, it provides a critical framework for analyzing and transforming the law to better address the needs, rights, and experiences of women within society.

When it comes to the topic of legal status for pregnant women and their unborn child, it's important to remember that women are citizen, too. The laws and policies that affect them can make a huge difference in their access to healthcare, the decisions they can make about their own bodies, and how much control they have over their own lives. Feminist scholars have argued that women should have the right to control their own bodies, just like anyone else. That means they should be able to choose when and if they have a child, and whether or not they want to carry that child to term. Forcing a woman to carry a child against her will goes against her basic rights as a human being, and it treats her like she's not equal to everyone else under the law. These scholars don't just focus on the rights of the unborn child, though. They also make sure to consider the woman's health and wellbeing. They believe that women should have the right to choose whether or not they want to be pregnant, and they argue that this choice should be protected by strong legal measures.

Feminist theory goes even further, pointing out that it's important to recognize the role women play in reproduction. It emphasizes the need for reproductive autonomy, which means giving women the same rights and freedoms when it comes to their bodies as men have. By doing this, feminist scholars hope to ensure that women have the same level of control over their bodies as everyone else.

❖ **Theory of Utilitarianism**

Utilitarianism is all about doing what's best for everyone involved, based on how it affects their happiness. It's about making sure that everyone's well-being counts, not just the person who's doing the action or the ones right next to them.

[16] Mohd Aqib Aslam, "Feminist Jurisprudence and Its Impact In India: An Overview," Legal Service India, accessed April 1, 2024, [https://www.legalserviceindia.com/legal/article-1859-feminist-jurisprudence-and-its-impact-in-india-an-overview.html].

Even animals get a say in things, since they can feel pleasure and pain too. So, when it comes to deciding what's right and wrong, utilitarianism looks at all the pros and cons for everyone involved and tries to figure out which choice will make things better for the most people.[17]

Now, when it comes to the legal status of an unborn child, the utilitarian perspective says that we should consider the consequences of different laws and policies on the well-being of the pregnant women, the unborn child, and society as a whole. It's not just about making one person happy; it's about making sure everyone's taken care of. It is like trying to find the best way to keep everyone healthy and happy, instead of just focusing on one person. For example, when it comes to abortion laws, the utilitarian view would look at how different laws would affect the well-being of everyone involved. It would ask questions like, "Will this law help pregnant women feel safer and healthier?" and "Will it protect the unborn baby from harm?" and "Will it make society as a whole better off?" It's all about finding the balance between everyone's needs and rights, and figuring out what's going to make the most people pleasure in the long run.

The utilitarian perspective on the legal status of unborn children recognizes that both the pregnant women and the unborn child have rights and interests that need to be considered. They might argue for laws and policies that aim to minimize harm to unborn child, like making sure pregnant women have access to good prenatal care to help give their child the best start in life. But at the end of the debate, it's all about figuring out what will make things better for everyone involved, based on how it affects their happiness and well-being.

IX. LEGAL FRAMEWORK

The status of unborn child in India is influenced by many laws, religious belief, customs, and judicial interpretation. These laws deal with the issue related to rights

[17] "Utilitarianism" (Obo), accessed April 1, 2024, [https://www.oxfordbibliographies.com/display/document/obo-9780195396577/obo-9780195396577-0431.xml]

of the unborn child, protection of unborn child, reproductive rights of pregnant women, and protection of fetal interest which are as follows:

A. Constitution of India, 1950

Article 21 (Right to Life and Personal Liberty) – it states, "No person shall be deprived of his life or personal liberty except according to procedure established by law."[18] Here the question arises does the scope of this article include an unborn child, can "person" include the unborn child? The interpretation of the word "person" is debatable, some scholar recognized unborn child as a person and others do not, but It did interpretated by the landmark judgements like "Justice K.S.Puttaswamy v. Union of India and others, 2017[19]", in this case Supreme Court recognized abortion right of women as it is a part of her personal liberty and right to life under article 21. The court didn't explicitly mention the unborn child, but it is balanced against the woman's fundamental rights.

B. The Medical Termination of Pregnancy Act, 1971

This act makes it legal to have an abortion in certain cases and protects the mental and physical health of women. It gives certain reasons for terminating a pregnancy, like if there's a big risk that the child would be born with serious health problems. The act also sets limits on when you can have an abortion, like only up to 12 weeks or later with a doctor's permission. The decision to have an abortion always belongs to the pregnant person, because it's their body and their life. But in the case of minors, they need their guardian's permission. The goal of this law is to make sure the rights and interests of both the pregnant person and the unborn child are taken care of within the rules of this act.

These laws are really important for women's health and safety, but they're also part of a much bigger and more complicated picture, with lots of ethical, social, and medical issues to think about, like abortion itself.

C. Bharatiya Nyaya (second) Sanhita, 2023

[18] India Const. art. 21
[19] Justice K.S. Puttaswamy and Anr. vs. Union of India (UOI) and Ors (2019) 1 SCC 1

This legislation directly addresses the protection of unborn child, but it does not address the legal status of unborn child as separate entities. However, there are several sections deals with the protection of unborn child and pregnant women as follows.

- Under section 88[20] states that "Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."
- Under section 90(1) [21]states that "Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."
- Under section 92[22] of this act states that, "Whoever does any act under such circumstances, that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick **unborn child**, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

D. Transfer of Property Act, 1882

This act provides the interest of an unborn child over a property, thereby under section 13 of this act deals with transfer for the benefit of unborn child but on certain conditions.

Section 13 (Transfer for benefit of unborn person.)— Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created

[20] Bharatiya Nyaya (Second) Sanhita, 2023, § 88.
[21] Bharatiya Nyaya (Second) Sanhita, 2023, § 90(1)
[22] Bharatiya Nyaya (Second) Sanhita, 2023, § 91

for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.[23]

Thus, it can be said that you cannot directly transfer the ownership of property to an unborn child, the child must be born alive to legally authorize for the ownership of property. Then the question arises who will hold that property and manage it in the interest of unborn child, so that in response the essential elements of this section are provided:

i. **Prior life interest:** it is a situation where an interest in a property is created for a living person until the ownership of that property transferred to an unborn child, the living person is a temporary holder on a property and he has the right to use and generate income from the property but he cannot sell or dispose of that property, the ownership of that property will directly transfer to unborn at the time of birth.

ii. **Absolute interest:** it means a full ownership over any kind of property where owner has the right to possess, sell, use, earn an income, enjoy and dispose of the property. At the time of birth, the absolute interest validated the unborn child to acquire the complete ownership of the property without any limitation imposed by prior life interest holder which ultimately protect the interest of an unborn child through the absolute interest deemed under this section.

iii. **Vested interest:** It means the ownership of property will transfer only on meeting of specific conditions, but it doesn't mean absolute right over property. An unborn child has vested interest over property because the ownership of property will transfer only at the condition of born alive. Under section 20 of Transfer of Property Act, 1882 where clearly mention that "when unborn person acquires vested interest on transfer for his benefit"— Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from

[23] Transfer of Property Act, 1882, § 13

the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth.[24]

Overall, the legal framework ensures the rights and dignity of unborn child and pregnant women. However, there is remain challenges in protecting the right of women and unborn child, it is crucial to address these challenges and enhances the rights and well-being of unborn child.

X. FINDINGS

- The legal standing of unborn infants is seen differently by many legal systems and cultures around the world.
- Different cultures have different views on the rights of unborn infants; these differences can be attributed to historical changes in religious and cultural perspectives.
- With rules governing abortions to safeguard expectant mothers' health and restrictions on pregnancy termination, modern legal systems have witnessed dramatic shifts in the status of unborn infants.
- By supporting women's autonomy to make decisions regarding their pregnancies, feminist legal theories have an impact on legislative frameworks.
- Legal considerations must weigh the rights and interests of the pregnant woman and the unborn child.
- Unborn infants have a complicated legal situation that is impacted by a variety of historical, cultural, and religious elements.
- Legal frameworks and medical research have advanced, yet discussions about the status of unborn infants continue.

XI. CONCLUSION

The legal status of an unborn child is a complex and unresolved question. It's something that lawyers and scholars have argued about for a long time. The main

[24] Transfer of Property Act, 1882, s 20

questions are about whether an unborn child is a person, what rights a pregnant woman has, and what people think about all of this.

In India, the law says that an unborn child has rights only after they're born. But there are a few exceptions, like injury to a pregnant woman or inheritance of property. And there's a law that lets women have an abortion if a doctor says it's needed for their health. It is a challenge between a woman's right to choose what happens to her body and the potential rights of the unborn baby. There are different theories about how we should protect the rights of unborn children and pregnant women. Natural law theorists think that the law should protect unborn children because they have an inherent right to live, no matter what. Positive legal theorists think that the law should recognize the status of unborn child by putting the focus on the right of unborn child and also making sure the mother is healthy and safe, and that she should be able to make decisions about her own body.

There are still a lot of disagreements about how to handle this, and it's not easy to find the right balance. But we can try to have open discussions and figure out a way to make the law fairer and more just for everyone involved, both before and after they're born. The study highlights the nuanced and complicated legal position of unborn infants, with important ramifications for society, legal scholars, and governments. Legislators drafting legislation pertaining to abortion and reproductive rights must tread carefully when balancing a woman's freedom to make her own decisions with the potential rights of an unborn child. To create legal frameworks that safeguard both the unborn child and the pregnant woman, legal scholars must dive further into a variety of legal theories, including positive legal theory and natural law. In order to preserve the rights and well-being of every person, both before and after birth, society as a whole must have candid conversations to resolve conflicting viewpoints and work toward just and fair legal solutions. This will promote a more diverse and egalitarian society.

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